CERTIFICATE

Supreme Court of the United States

OCTOBER TERM, ~~1940~~ 1941

No. ~~868~~ 39

CONTINENTAL CASUALTY COMPANY AND MARIE M. SHORT

vs.

THE UNITED STATES OF AMERICA

CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

FILED MARCH 25, 1941.

SUPREME COURT OF THE UNITED STATES

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[fol. 1]

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

October Term, 1940

No. 7576

CONTINENTAL CASUALTY COMPANY and MARIE M. SHORT, Appellants,

v.

UNITED STATES OF AMERICA

Certificate to the Supreme Court of the United States

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

STATEMENT OF FACTS

The above entitled case is an appeal from an order of the District Court of the United States for the District of New Jersey entered October 5, 1940, dismissing the petition of Continental Casualty Company and Marie M. Short for remission of the forfeiture entered by the court July 19, 1940, on the recognizance in the sum of $10,000 taken in that court on June 20, 1940 from Herbert R. Short, as principal, and Continental Casualty Company, as surety, conditioned for the appearance of the said principal in that court to answer any and all charges made against him, to abide the judgment of the court and, if convicted to "appear for judgment and render himself in execution thereof upon such day as the said District Court may order."

[fol. 2] The said Herbert R. Short was convicted in the District Court for the District of New Jersey on June 20, 1940 upon two counts of an indictment charging conspiracy and was on that day directed to appear in the said court on July 19, 1940 for sentence. On July 19, 1940 the said Herbert R. Short did not appear in the said court. The court thereupon ordered a bench warrant to issue and ordered the recognizance to be forfeited. The said Herbert R. Short was apprehended on August 29, 1940. On September 12, 1940 he was brought before the District Court and sentence was then imposed upon him.

On September 7, 1940 and within the term of court at which the order of forfeiture had been entered, Continental Casualty Company, the surety in the said recognizance, and Marie M. Short, the principal's wife, who had given Continental Casualty Company counter indemnity in the sum of $10,000, filed their joint petition praying the District Court to remit the forfeiture theretofore entered on the said recognizance. In a supplemental petition filed by Marie M. Short on September 21, 1940, it was averred that she at all times cooperated with the United States authorities and that she was of opinion that it was chiefly due to the efforts she made that her husband returned from Canada to Philadelphia preparatory to surrendering himself and where he was apprehended.

The District Court found as a fact that the default of Herbert R. Short, the principal in the recognizance, was willful, and dismissed the petition for remission of the forfeiture upon the ground that it was without power under Section 1020 of the Revised Statutes (18 U. S. C. § 601) [fol. 3] to grant the petition in view of the willful default of the principal, and that it had no power independently of the statute to entertain the petition.

Questions

The United States Circuit Court of Appeals for the Third Circuit, being in doubt as to the extent of the jurisdiction of the District Court in this matter in the light of the considerations suggested in the majority opinion in United States v. Kelleher, 57 F. 2d 684, certiorari denied sub nomine Greater City Surety & Indemnity Corp., 286 U. S. 565, and in view of the opinion of Chief Justice Marshall at circuit in United States v. Feely, Fed. Cas. No. 15,082, and the questions involved being of great importance in the administration of the criminal law, hereby certifies the following questions of law concerning which it desires instruction for the proper decision of the above entitled case, to wit:-

1. Is Section 1020 of the Revised Statutes (18 U. S. C. § 601) the exclusive source of the power of the District Court of the United States at any time to remit the forfeiture of the penalty of a recognizance taken in a criminal cause?

2. Is the word "party" appearing in the phrase "willful default of the party" in Section 1920 of the Revised Statutes (18 U. S. C. § 601) intended to describe

(a) the person who makes application to the court for the remission of the forfeiture of the penalty, whether that person is the principal or the surety in the recog- [fol. 4] nizance, or

(b) only the principal in the recognizance?

3. If the answer to Question 1 is "No" does the District Court of the United States have common law power to remit the forfeiture of the penalty of a recognizance taken in a criminal cause, where the default of the principal in the recognizance was willful?

4. If Question 3 is answered and the answer thereto is "Yes" is the common law power to remit the forfeiture limited to exercise upon an application made within the term of court at which the order of forfeiture was entered?

Albert B. Maris, Circuit Judge. Charles Alvin Jones, Circuit Judge. William H. Kirkpatrick, District Judge.

Endorsed on Cover: File No. 45,217. U. S. Circuit Court of Appeals, Third Circuit. Term No. 868. Continental Casualty Company and Marie M. Short vs. The United States of America. Certificate. Filed March 25, 1941. Term No. 868 O. T. 1940.